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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT

(Butte)

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VIRGINIA L. LASWELL, an Incompetent  
Person, etc., et al.,

Plaintiffs and Respondents,

v.

MARY ELLEN LASWELL,

Defendant and Appellant.

C062464

(Super. Ct. No.  
146066)

Plaintiffs Susan Laswell and Lorraine Buchla are the sisters of defendant Mary Ellen Laswell. As the health of their mother, Virginia Laswell, deteriorated, the disputes between the siblings increased, culminating in a civil harassment restraining order against Mary Ellen. On appeal, Mary Ellen contends that there was no basis for this order and that the order infringes on her constitutional rights. We disagree and affirm.

## FACTS AND PROCEEDINGS

Virginia Laswell had three adult daughters: plaintiffs Susan and Lorraine, and defendant Mary Ellen. Virginia suffered from dementia and, according to her doctors, was incompetent to make her own decisions.

Pursuant to Virginia's health care directive, trust, and power of attorney, Susan was authorized to make decisions about Virginia's care and finances. The health care directive empowered Susan to make all health care decisions, such as choosing or rejecting physicians, health care professionals and health care facilities. The power of attorney empowered Susan to provide Virginia with "suitable living quarters," to pay for Virginia's ongoing needs, and to arrange for "residential care [for Virginia] in a convalescent hospital, skilled nursing home, or other alternative residential facility." Susan was also the successor trustee of Virginia's revocable living trust, which included Virginia's property in its corpus.

Mary Ellen had lived with Virginia in Virginia's house for more than 22 years, and she continued to live in the house after Virginia was moved to convalescent hospitals and then to Larkspur Lodge, a facility for dementia patients.

Problems arose when Mary Ellen began to interfere in her mother's care. Plaintiffs' declarations described Mary Ellen as berating the staff of Larkspur Lodge, making unfounded complaints, and demanding special treatment for her mother. Mary Ellen threatened to report the care facility to regulatory

agencies, and made her complaints loudly in front of her mother, other patients, their families and guests. Mary Ellen had engaged in similar conduct at her mother's previous care facilities; in fact, defendant's behavior was so disruptive that one of the convalescent hospitals told Susan that it would not take Virginia back as a patient because of Mary Ellen's actions.

Plaintiffs submitted a declaration from the owner of Larkspur Lodge that demonstrated that this facility was equally unhappy with defendant's conduct. The owner said that dementia patients need a calm and stable atmosphere, and Mary Ellen's tirades created "pandemonium and disruption" for staff and residents. On one occasion, Mary Ellen was so disruptive that she had to be physically removed from the premises. Mary Ellen had somehow obtained the combination to the door, requiring the care facility to reset all of its combinations. Mary Ellen often called the facility to discuss her mother's medical treatment, even though Susan was responsible for all health decisions. Larkspur Lodge staff documented instances in which Mary Ellen criticized Virginia's appearance directly to Virginia, tried to make Virginia walk farther than she was able, removed Virginia from strengthening activities because Mary Ellen considered them childish, and told her mother that she was sorry she was "locked in this awful place."

According to the residence staff, dementia patients are vulnerable and sensitive to how they are treated by others. They stated that Mary Ellen's behavior was "not beneficial to

her mother[']s well-being" and in fact was "harmful and intimidating" to Virginia and disrupted her routine.

Larkspur Lodge suggested a regular visiting schedule for Mary Ellen in the library of the facility, and further suggested that any complaints Mary Ellen had about her mother's care be submitted to Susan for documentation before being sent on to a regulatory agency. The facility's owner explained that he was required to respond to every written claim to a regulatory entity, regardless of its merit, and a succession of frivolous complaints became a burden. He added that Virginia's care would be more consistent if the facility dealt only with Susan, who had been appointed to make decisions for Virginia under the health care directive and power of attorney.

Larkspur Lodge had informed plaintiffs that if Mary Ellen's behavior could not be controlled, it would have to discharge Virginia from their facility.

Susan stated that there was no basis for any of Mary Ellen's complaints about Larkspur Lodge, and that Virginia was receiving good care. Lorraine believed that Mary Ellen was engaging in this conduct only to "create an image that MARY ELLEN is in control and has power over all of us." Lorraine stated that Mary Ellen was attempting to "interfere with, burden and make impossible convalescent and custodial care of [Virginia]," and "drive any convalescent facility to remove [Virginia] as a patient in order to gain control over [her]." She added, "[U]nless restrained in her actions and statements, MARY ELLEN LASWELL will cause our mother to be discharged from

Larkspur Lodge or any other facility which can provide routine and proper care and supervision. In my observation, much of MARY ELLEN'S behavior is designed to harass SUSAN and myself and to show that MARY ELLEN has power over our mother."

Plaintiffs reported other problems as well. Mary Ellen had previously arranged Virginia's release from one convalescent hospital without informing Susan or Lorraine. She once took Virginia out from a convalescent hospital for a full day without authorization and without notifying staff. When Susan succeeded as successor trustee of Virginia's trust, she discovered that Mary Ellen had withdrawn \$10,000 from her mother's account and could not account for some missing deposits. Mary Ellen refused to explain these transactions. She refused access to the house for Susan to obtain Virginia's wheel chair, walker, health supplies or clothes, items needed for Virginia's transition to Larkspur Lodge. Susan was also unable to get into the house to collect Virginia's business records for the preparation of Virginia's tax returns.

Plaintiffs sought a restraining order to stop Mary Ellen's harassment. Mary Ellen's behavior was described at length in the petition and in declarations from Susan, Lorraine, and the owner of Larkspur Lodge. Plaintiffs asserted that this course of conduct caused substantial emotional distress.

Defendant filed an answer to the petition but submitted no declarations or other evidence in opposition to plaintiffs' motion. The trial court issued a civil harassment restraining order against Mary Ellen after modifying some of the provisions

suggested by plaintiffs. Because the terms of this order are at issue in this appeal, we recount them in some detail.

The order required Mary Ellen to stay at least 100 yards away from her sisters and their spouses, and mandated that any contact between the sisters be through written correspondence. The court placed restrictions on Mary Ellen's contact with Virginia and staff of Larkspur Lodge. Specifically, the order limited Mary Ellen to no more than five visits per week for no more than one hour per visit, with visits to occur in a room designated by the facility staff. Mary Ellen was also ordered not to make "derogatory statements in regard to Larkspur Lodge or her mother's condition or the care or lack of care, her mother's clothes, her mother's care or the services or attentiveness or any other similar complaint in a verbal form or a written form, to her mother . . . or to the staff or other patients or guests of those patients.

The order continued: "No complaints shall be filed by MARY ELLEN LASWELL, or any person acting on her behalf, with county, state or federal health care or adult care licensing facilities or agencies. If MARY ELLEN LASWELL has objections to the conditions or services provided to VIRGINIA LASWELL or other patients of a health care facility, she shall state them in writing and deliver the writing to SUSAN LASWELL and to no one else, unless ordered to provide such writing by a Court, after hearing, to third parties or agencies."

Mary Ellen was ordered to give Susan and Lorraine access to Virginia's home in order to take photographs and document the

need for any repairs, maintenance or improvements. The court also ordered Mary Ellen to give Virginia's wheelchair, walker, clothing and health care supplies to Susan for Virginia's use and care.

This appeal followed. Virginia died on October 1, 2009, while this appeal was pending, and plaintiffs sought to dismiss the appeal as moot. We denied their motion.

### DISCUSSION

Code of Civil Procedure section 527.6, subdivision (a) provides: "A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an injunction prohibiting harassment as provided in this section." (Unspecified statutory references that follow are to the Code of Civil Procedure.)

Subdivision (b) of that statute defines "harassment" as "unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff." (§ 527.6, subd. (b).) A "course of conduct" is further defined as "a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose . . . .

Constitutionally protected activity is not included within the meaning of 'course of conduct.'" (§ 527.6, subd. (b)(3).)

"Section 527.6 was enacted 'to protect the individual's right to safety, happiness and privacy as guaranteed by the California Constitution.' [Citations.] It does so by providing expedited injunctive relief to victims of harassment." (*Brekke v. Wills* (2005) 125 Cal.App.4th 1400, 1412.)

However, "[n]othing in the statute indicates that it was intended to supplant normal injunctive procedures applicable to cases concerning issues other than 'harassment' as statutorily defined." (*Byers v. Cathcart* (1997) 57 Cal.App.4th 805, 811.) The expedited procedures of section 527.6 contrast with the normal injunctive process which allows time for investigation, pleadings, discovery, and a full trial. The summary nature of section 527.6 is balanced by limitations designed to narrow its scope. (*Ibid.*) "One such limitation is that any injunction which results cannot exceed three years in duration [and therefore] does not allow for final resolution of disputed rights. Another limitation is that 'harassment' must be found by clear and convincing evidence before future conduct may be enjoined. [Citation.] Another limitation is that a section 527.6 injunction may enjoin only 'harassment' as defined. [Citation.] Conduct which serves a legitimate purpose is outside the definition of 'harassment' and cannot be enjoined pursuant to the summary procedures of section 527.6, even if such conduct might ultimately be enjoinable according to normal



injunctive procedures after full development of the facts and law." (*Ibid.*)

Mary Ellen asserts that the civil harassment restraining order issued by the court did not meet the requirements of section 527.6. We do not agree with any of her contentions.

First, she argues that Susan lacked standing to seek a civil harassment restraining order on behalf of Virginia. She emphasizes that the motion for the order indicated that Virginia's request was made "by Susan Laswell per AHCD," the advanced health care directive, and that none of the powers enumerated in that directive include the authority to seek a restraining order. She contends that Virginia herself would have had to seek a restraining order if she wanted one.

Attachment 6 to the request for the restraining order explicitly states that Susan was not only appointed to act under Virginia's health care directive, but was also appointed under a durable power of attorney and as a successor trustee to Virginia's trust. Contrary to Mary Ellen's characterization, Susan's powers were not limited to health care matters. She was authorized to make financial decisions for Virginia, arrange for residential care, and otherwise act in Virginia's stead. Susan's powers were far broader than Mary Ellen recognizes.

In any event, the restraining order in fact relates to Virginia's health care. Declarations described the scenes Mary Ellen created at Larkspur Lodge. The owner of the facility explained that dementia patients need calm and order and that Mary Ellen's conduct was detrimental to Virginia and the other

patients. The owner told plaintiffs that Virginia would be discharged from the facility if these disruptions continued. Mary Ellen's behavior, the subject of the restraining order, was directly linked to Virginia's health care.

Mary Ellen also contends that her conduct did not meet the statutory definition of "harassment" because there was no "knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person." (§ 527.6, subd. (b).) She also contends that certain items in the restraining order were not directed toward stopping harassment. Again, we disagree.

The declarations submitted in support of the restraining order describe Mary Ellen's behavior and threats, conduct that occurred in Virginia's presence and disturbed and disrupted Virginia's treatment and care to the point that Virginia might not be allowed to continue living at Larkspur Lodge. The declarations also described how Mary Ellen refused to give Susan the medical and personal items required by Virginia and how she otherwise sought to interfere with Susan's powers to act for Virginia. This evidence established harassment as defined in section 527.6, and each enjoined activity was the proper subject of a restraining order.

Finally, Mary Ellen asserts that the restraining order violated her constitutional right to free speech.

As we have explained, "The United States Supreme Court has 'long recognized that not all speech is of equal First Amendment importance. It is speech on "'matters of public concern'" that

is "at the heart of the First Amendment's protection."

[Citations.]' [Citation.] The "special concern [for speech on public issues] is no mystery": [¶] "The First Amendment 'was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.' [Citations.] '[S]peech concerning public affairs is more than self-expression; it is the essence of self-government.' [Citation.] . . . ."' [Citation.] 'In contrast, speech on matters of purely private concern'--while 'not totally unprotected'--'is of less First Amendment concern.' [Citation.] When such speech . . . causes damage, civil sanctions may be imposed because "[t]here is no threat to the free and robust debate of public issues; there is no potential interference with a meaningful dialogue of ideas concerning self-government; and there is no threat of liability causing a reaction of self-censorship by the press. . . ."' [Citation.]' [Citation.]" (*Brekke v. Wills*, *supra*, 125 Cal.App.4th. at p. 1409.)

Here, the limitations placed on Mary Ellen relate to a private matter, namely, a dispute over Virginia's care. They do not implicate matters of public concern and consequently do not raise First Amendment issues.

We recognize that the court's order precludes Mary Ellen from complaining directly to governmental agencies about care provided by Larkspur Lodge, a restriction that might theoretically infringe on Mary Ellen's right of free speech. However, the uncontradicted evidence established that Mary Ellen made unfounded complaints as part of her harassment campaign,

thereby placing a burden of response on Larkspur Lodge and adding to the emotional distress of Susan and Lorraine by raising the possibility that Virginia would be discharged from the facility. It is important to note that Mary Ellen was not prevented from making complaints; the order only regulated how those complaints were to be made. It stated: "If MARY ELLEN LASWELL has objections to the conditions or services provided to VIRGINIA LASWELL or other patients of a health care facility, she shall state them in writing and deliver the writing to SUSAN LASWELL and to no one else unless ordered to provide such writing by a Court, after hearing, to third parties or agencies." Given Mary Ellen's past conduct, this restriction on the manner of complaint is reasonable and does not violate the First Amendment. (See *Pacific Gas & Electric Co. v. Public Utilities Com.* (2000) 85 Cal.App.4th 86, 93.)

#### DISPOSITION

The judgment is affirmed. Plaintiffs are awarded their costs on appeal. (Cal. Rules of Court, rule 8.278(a).)

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HULL, J.

We concur:

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BLEASE, Acting P. J.

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SIMS, J.